

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 165 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SOJITRA ARUNKUMAR ARAJANBHAI

Versus

STATE OF GUJARAT

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Appearance:

Mr. Manish Parikh for the petitioner.

Mrs. Siddhi Talati, A.G.P. for Respondents No. 1, 2 and 3.

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 03/12/97

ORAL JUDGEMENT

Mr. Manish Parikh, learned advocate appears for the petitioner and Mrs Siddhi Talati, learned A.G.P. appears for respondents. Heard the learned counsel for the parties.

From the perusal of the record it appears that the petitioner has filed this petition seeking a mandamus that he having been interviewed for the post of Laboratory Assistant on 26.11.1987 and found fit for the post by the respondent No.3 to be appointed as Laboratory Assistant in the office of the respondent No.3 but sanction of the higher authorities for such appointment

could not be obtained on account of ban imposed by the Government and on the ban having been lifted, the respondents be directed to give appointment to him on the basis of the selection dated 26.11.1987 before making fresh selection. Another prayer was also made for setting aside the order by which the select list has been cancelled.

In its reply dated 15.2.1994, the respondents had averred that for the same relief seeking direction to the respondents No.2 and 3 to give appointment to the petitioner to the post of Laboratory Assistant, the petitioner had also filed Regular Civil Suit No. 239 of 1989 before the learned Civil Judge (S.D.), Amreli and the said suit was unconditionally withdrawn on 16.7.1991. Copies of the plaint as well as the order have been placed as Annexure I to the reply affidavit. The petitioner has not made any mention of these facts in his petition. Moreover, I further find that the petition has been filed in the Court on 9.1.1991 and the suit has been withdrawn on 16.7.1991 after notices were issued in the petition on 16.1.1991. These circumstances clearly disclose not only that the petitioner is guilty of suppressing material fact but also that the petitioner having approached the Civil Court prior to approaching this Court and has subsequently withdrawn the suit unconditionally any other proceeding in respect of the same relief would be barred by the principles of constructive res-judicata. The petition is accordingly dismissed. Rule is discharged with no order as to costs. (ers)